

Appl. No. : 09/586,666
Filed : June 1, 2000

Applicant respectfully submits that the § 102(b) rejection is improper since in the Northern Hemisphere the summer solstice occurs on June 21 or 22 which typically marks the beginning of the Summer season. In any event, the earliest possible publication date of Footnotes, Flex-Foot Brochure (Summer 1999) is in June. Applicant's present application was filed on June 1, 2000 which is within one year from the earliest possible publication date of Footnotes, Flex-Foot Brochure (Summer 1999).

Applicant also directs the Examiner's attention to U.S. Provisional Patent Appl. No. 60/201,150, filed May 2, 2000. The present utility application claims priority to this provisional application.

Accordingly, Applicant respectfully requests the Examiner to withdraw the § 102(b) rejection of Applicant's claims.

Applicant believes that the § 102(e) rejection based on K2 Sensation™, Flex-Foot Brochure (June 1, 1999) is a typographical error and the Examiner meant "102(e)" to actually read --102(a)--.

Applicant has enclosed herewith a Declaration under 37 C.F.R. § 1.131 from co-inventor Hilary D. Pouchak which establishes inventorship of the claimed subject matter prior to the publication dates of the references used by the Examiner to assert a § 102(a) rejection.

Accordingly, Applicant respectfully requests the Examiner to withdraw the § 102(a) rejection of Applicant's claims.

Priority Claim

Applicant respectfully requests the Examiner to acknowledge Applicant's priority claim under 35 U.S.C. § 119(e) to U.S. Provisional Appl. No. 60/201,150, filed May 2, 2000. The priority claim is contained in the specification, as filed on June 1, 2000, and as required by 37 C.F.R. § 1.78(a)(5).